

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINCENT OBIAJULU,

Plaintiff,

v.

SAN MATEO PROBATION DEPARTMENT,

Defendant.

No. C 07-3870 CW

ORDER RE:  
DEFENDANT'S MOTION  
TO DISMISS AND  
PLAINTIFF'S MOTION  
FOR LEAVE TO FILE AN  
AMENDED COMPLAINT

Defendant County of San Mateo has filed a motion to dismiss the complaint, or, in the alternative to strike and for a more definite statement. Plaintiff Vincent Obiajulu opposes the motion and moves to file an amended complaint. Federal Rule of Civil Procedure 15(a) provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Defendant has not filed a responsive pleading in this action. See Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 n.3 (9th Cir. 2000) (a motion to dismiss is not a "pleading" within the meaning of Rule 15). Therefore, Plaintiff need not seek leave to file his FAC. Plaintiff's motion for leave to file an amended complaint (Docket No. 13) is DENIED as moot. Plaintiff may file his FAC. Defendant's motion to dismiss the initial complaint (Docket No. 7) is DENIED without prejudice as moot.

IT IS SO ORDERED.

11/28/07

Dated: \_\_\_\_\_



CLAUDIA WILKEN  
United States District Judge

**United States District Court**  
For the Northern District of California

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